

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Implementation of the Pay Telephone)	CC Docket No. 96-128
Reclassification and Compensation Provisions)	
of the Telecommunications Act of 1996)	
)	

**REPLY COMMENTS OF BELL SOUTH TELECOMMUNICATIONS, INC.,
SBC COMMUNICATIONS INC., AND THE VERIZON TELEPHONE COMPANIES ON
COMMENTS FILED IN RESPONSE TO INDEPENDENT PAYPHONE ASSOCIATION
OF NEW YORK’S PETITION FOR AN ORDER OF PREEMPTION AND
DECLARATORY RULING**

The comments in support of Independent Payphone Association of New York’s (“IPANY”) petition filed by Illinois Public Telecommunications Association, American Public Communications Council, and Northwest Public Communications Council and Minnesota Independent Payphone Association add nothing to the comments previously filed in this docket. The following four points are beyond serious dispute.

First, IPANY’s petition is barred by principles of res judicata and collateral estoppel.¹ None of the comments filed in support of IPANY even addresses this obvious point. IPANY’s refund claim is dead.²

Second, the Commission squarely determined in 1996 that state commissions would retain responsibility for overseeing basic payphone line tariffs.³ The Commission understood

¹ See Comments of New York State Department of Public Service, CC Docket No. 96-128, at 1-3 (FCC filed Jan. 18, 2005) (“NYDPS Comments”).

² See Comments of BellSouth Telecommunications, Inc., SBC Communications Inc., and the Verizon Telephone Companies on Independent Payphone Association of New York’s Petition for a Declaratory Ruling, CC Docket No. 96-128, at 10-16 (FCC filed Jan. 18, 2005)

³ See Order on Reconsideration, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 21233, 21308, ¶ 163 (1996).

that state procedures and remedies would therefore govern implementation of federal rules. What the appropriate outcome should be of a particular proceeding before a particular state commission is not an issue that the Commission should address. Furthermore, the particular procedural circumstances of a given case may determine the available relief. For example, IPANY failed even to ask for any type of refund relief until years after the state proceeding at issue began. These matters cannot be resolved except on a case-by-case basis, requiring intimate understanding of the procedural facts and full briefing by the parties. That is not something that the Commission should address in response to a petition for declaratory ruling.

Third, no RBOC promised to provide unlimited refunds in any case where it was eventually determined that existing payphone line rates had to be reduced to comply with the Commission's evolving interpretation of the New Services Test. To the contrary, the RBOC Coalition sought a limited waiver – a short extension in the date for filing new state tariffs (where required; here they were not). In exchange, RBOCs were required to make a similarly limited commitment – to put PSPs in the same position had the waiver not been granted. That commitment is not implicated here at all. And in none of the cases before the Commission is there any claim that, *as a result of the waiver*, PSPs were somehow disadvantaged.

Fourth, there is no uncertainty about what pricing standard applies to payphone line rates under federal law, nor is there any claim that any state regulator is refusing to comply with federal law. The NYDPS has made clear that the *Wisconsin Order*⁴ “is being fully complied with” in current proceedings before that state commission.⁵ Accordingly, there can be no basis for preempting that Commission's authority over state payphone line rates. Furthermore, the

⁴ Memorandum Opinion and Order, *Wisconsin Public Service Commission; Order Directing Filings*, 17 FCC Rcd 2051 (2002) (“*Wisconsin Order*”), *aff'd*, *New England Pub. Communications Council, Inc. v. FCC*, 334 F.3d 69 (D.C. Cir. 2003).

⁵ NYDPS Comments at 6.

NYDPS has at all times hewed to the requirements of federal law by ensuring that Verizon's rates "meet the new services test."⁶

We have addressed these points at length in prior comments.⁷ As independent PSPs come to grips with the weakness of their legal arguments, they indulge instead in accusations against state regulators and the RBOCs. The claim that RBOCs and state regulators have deliberately ignored federal law is baseless. Proceedings involving payphone line rates have followed divergent paths before different state commissions and state courts, reflecting a multiplicity of litigation choices by private parties and remedial and procedural diversity at the state level. It is not surprising that, as a result, there have been a variety of outcomes.⁸ Any PSP that believes a particular outcome is inconsistent with binding law can seek judicial review – just as IPANY has already done.

⁶ *Id.* at 5.

⁷ See *supra* note 2; see also Comments of BellSouth Telecommunications, Inc., SBC Communications Inc., and the Verizon Telephone Companies on Southern Public Communication Association's Petition for a Declaratory Ruling, CC Docket No. 96-128 (FCC filed Dec. 10, 2004) ("Comments on SPCA Petition"); Comments of BellSouth Telecommunications, Inc., SBC Communications Inc., and the Verizon Telephone Companies on Illinois Public Telecommunications Association's Petition for a Declaratory Ruling, CC Docket No. 96-128 (FCC filed Aug. 26, 2004) ("Comments on IPTA Petition"); Reply Comments of BellSouth Telecommunications, Inc., SBC Communications Inc., and the Verizon Telephone Companies on Illinois Public Telecommunications Association's Petition for a Declaratory Ruling, CC Docket No. 96-128 (FCC filed Sept. 7, 2004).

⁸ See, e.g., Comments on SPCA Petition at 4 (noting that SPCA failed to challenge BellSouth's rates until six years after the rates were approved); Comments on IPTA Petition at 9 (noting that IPTA filed no formal complaint challenging payphone line rates).

CONCLUSION

IPANY's petition for declaratory ruling is procedurally barred and must be dismissed.

Respectfully submitted,

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